

three-day layover requirement of Rule XI clause 2(l)(6).

§ 5.2 A resolution reported by the Committee on House Administration, providing for payment from the contingent fund of additional compensation for certain positions created by House resolution, was called up as privileged.

On Aug. 5, 1970,⁽³⁾ the following proceedings took place:

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, by direction of the Committee on House Administration, I [call up] a privileged report (Rept. No. 91-1378) on the resolution (H. Res. 1117) relating to the compensation of two positions created by House Resolution 543, 89th Congress, and ask for immediate consideration of the resolution.

The Clerk read the resolution as follows:

H. RES. 1171

Resolved, That, until otherwise provided by law, effective as of January 1, 1970, the per annum (gross) rate of compensation (basic compensation plus additional compensation authorized by law) of each of the two positions referred to in House Resolution 543, Eighty-ninth Congress, shall not exceed the annual rate of basic pay for level IV of the Executive Schedule of section 5315 of

title 5, United States Code. The contingent fund of the House of Representatives is made available to carry out the purposes of this resolution.

[The resolution was rejected.]

Surplus Contingent Funds

§ 5.3 The House agreed to a resolution authorizing the transfer of surplus 1960 contingent funds to liquidate 1962 contingent fund obligations of the House.

On June 21, 1962,⁽⁴⁾ the following proceedings took place:

MR. [SAMUEL N.] FRIEDEL [of Maryland]: Mr. Speaker, by direction of the Committee on House Administration, I call up the resolution (H. Res. 694) authorizing the transfer of certain funds within the contingent fund of the House of Representatives, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That such funds as may be necessary to liquidate the 1962 obligations may be transferred, within the contingent fund of the House of Representatives, from "Miscellaneous Items, 1960", to "Special and Select Committees, 1962".

The resolution was agreed to.

A motion to reconsider was laid on the table.

3. 116 CONG. REC. 27449-51, 91st Cong. 2d Sess.

4. 108 CONG. REC. 11314, 87th Cong. 2d Sess.

See also 109 CONG. REC. 11462, 88th Cong. 1st Sess., June 25, 1963, for a

resolution authorizing transfer of surplus 1961 contingent funds to liquidate 1963 contingent fund obligations of the House.

B. REPORTING AND CONSIDERATION OF APPROPRIATION BILLS TEXT

§ 6. Generally; Privileged Status

The rules⁽⁵⁾ give a privileged status to reports on general appropriation bills. Under the rules, the Committee on Appropriations is given “leave to report at any time” on general appropriation bills. But the privilege is subject to the requirement under another rule⁽⁶⁾ that general appropriation bills not be considered in the House until printed committee hearings and a committee report thereon have been available for the Members for at least three calendar days (excluding Saturdays, Sundays, and legal holidays). Of course, the rule requiring printed hearings and the committee report to have been available for three days may be waived by unanimous consent.⁽⁷⁾

5. See Rule XI clause 4(a), *House Rules and Manual* Sec. 726 (1981).

See § 5, *supra*, for discussion of the privileged status of resolutions reported by the Committee on House Administration that provide for expenditures from the contingent fund of the House.

6. Rule XXI clause 6 (subsequently clause 7), *House Rules and Manuals* § 848 (1981).

7. See 108 CONG. REC. 19237, 87th Cong. 2d Sess., Sept. 12, 1962 (proceedings relating to H.R. 13175).

The precedence of appropriation bills is also recognized in provisions relating to the order of business in Committee of the Whole.⁽⁸⁾ But the usual practice is to consider general appropriation bills under the rule giving privileged status to a motion that the House resolve itself into the Committee of the Whole for the purpose of considering general appropriation bills.⁽⁹⁾ The motion ordinarily designates the particular bill to be considered.

It should be emphasized that the right of the Committee on Appropriations to report at any time is confined strictly to general appropriation bills, and does not include appropriations for specific purposes or resolutions extending appropriations. An example of measures not considered “general appropriation bills,” and therefore not reported or called up as privileged, is a joint resolution providing continuing appropriations for departments and agencies of

8. See Rule XXIII clause 4, *House Rules and Manual* § 869 (1981).

9. Rule XVI clause 9, *House Rules and Manual* § 802 (1981). Under the rule, the motion to consider general appropriation bills and the motion to consider revenue bills are of equal privilege.

government, to provide funds until the regular appropriation bills are enacted.⁽¹⁰⁾ Similarly, a joint resolution providing an appropriation for a single government agency is not a general appropriation bill and is not reported as privileged.⁽¹¹⁾

Of course, consideration of non-privileged appropriation bills may be made in order by unanimous consent. Thus, a joint resolution continuing appropriations for a fiscal year may be called up as if privileged pursuant to a special order entered into by unanimous consent, even where such joint resolution has been reported pursuant to the rule⁽¹²⁾ relating to the filing of nonprivileged reports.⁽¹³⁾ Similarly, by unanimous

consent, the House may make in order the consideration of a resolution providing supplemental appropriations for a single government agency.⁽¹⁴⁾

All bills that make appropriations—in fact all proceedings touching appropriations of money—require consideration first in Committee of the Whole, and a point of order made pursuant to this rule is good at any time before the consideration of a bill has commenced.⁽¹⁵⁾

Relative Privilege

§ 6.1 The House having agreed that consideration of a general appropriation bill take priority over all business except conference reports, it was held that such agreement gave a higher privilege to the appropriation bill than to consideration of a resolution disapproving reorganization plans of the Presi-

10. See § 8.9, *infra*.

11. See § 7.4, *infra*; and 111 CONG. REC. 9518, 89th Cong. 1st Sess., May 5, 1965.

The Committee on Appropriations filed as privileged a joint resolution making supplemental appropriations to two diverse departments for the balance of the fiscal year. See *Procedure in the U.S. House of Representatives* Ch. 25 § 1.2 (4th ed.).

12. Rule XIII clause 2, *House Rules and Manual* § 743 (1981).

13. See § 8.8, *infra*. Joint resolutions continuing appropriations pending enactment of regular annual appropriation measures are, by unanimous consent, generally considered “in the House as in Committee of the

Whole,” but are sometimes considered in Committee of the Whole to permit more extensive general debate. See 115 CONG. REC. 31867, 31886, 91st Cong. 1st Sess., Oct. 28, 1969 (H.J. Res. 966).

14. 108 CONG. REC. 1149, 87th Cong. 2d Sess., Jan. 30, 1962.

15. Rule XXIII clause 3, *House Rules and Manual* § 865 (1981).

dent, business in order under the "21-day rule," and other business

On May 9, 1950⁽¹⁶⁾ the following proceedings took place:

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, I make the point of order that the House is not proceeding in the regular order because under section 205a of the Reorganization Act, which is Public Law 109 of the Eighty-first Congress, first session, any Member of the House is privileged, and this is a highly privileged motion, to make the motion that the House proceed to the consideration of House Resolution 516.

The gentleman from Michigan being on his feet to present this highly privileged motion, the regular order is that he be recognized for that purpose that the motion be entertained and the question put before the House, and my motion is that the House proceed to the consideration of House Resolution 516.

THE SPEAKER PRO TEMPORE:⁽¹⁷⁾ That is the resolution disapproving one of the reorganization plans?

MR. HOFFMAN of Michigan: That is right, House Resolution 516 disapproving plan No. 12. . . .

MR. [GEORGE H.] MAHON (of Texas): Mr. Speaker, on April 5, 1960, as shown at page 4835 of the daily Record of that day, the chairman of the Committee on Appropriations, the gentleman from Missouri (Mr. Cannon) asked and received unanimous consent

that the appropriation bill should have the right-of-way over other privileged business under the rules until disposition, with the exception of conference reports. Therefore, I believe the regular order would be to proceed with the further consideration of H.R. 7786. . . .

MR. [JOHN] TABER [of New York]: Under the established rules of practice of the House, when a special order like that is granted, like that which was granted at the request of the gentleman from Missouri (Mr. Cannon), if those in charge of the bill do not present on any occasion a motion to go into Committee of the Whole, it is in order for the Speaker to recognize other Members for other items that are in order on the calendar. That does not deprive the holder of that special order of the right, when those items are disposed of, to move that the bill be considered further in Committee of the Whole. . . .

MR. [ROBERT F.] RICH [of Pennsylvania]: If the 21 resolutions that were presented to the House by the President, a great many of which have been considered by the Committee on Expenditures in the Executive Departments—of which the chairman is a member, and which have been acted on by that committee—are not presented to the House before the twenty-fourth of this month, they become law. The general appropriation bill does not necessarily have to be passed until the 30th of June, but it is necessary that the 21 orders of the President be brought before the House so they can be acted on by the twenty-fourth of this month, and it seems to me that they ought to take precedence over any other bill. . . .

16. 96 CONG. REC. 6720–24, 81st Cong. 2d Sess.

17. John W. McCormack (Mass.).

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER PRO TEMPORE: The Chair will hear the gentleman.

MR. RANKIN: I was going to say that if this is of the highest constitutional privilege it comes ahead of the present legislation.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The gentleman from Michigan makes a point of order, the substance of which is that the motion he desires to make or that someone else should make in relation to the consideration of a disapproving resolution of one of the reorganization plans takes precedence over the appropriation bill insofar as recognition by the Chair is concerned. The gentleman from Michigan raises a very serious question and the Chair feels at this particular time that it is well that he did so.

The question involved is not a constitutional question but one relating to the rules of the House and to the Legislative Reorganization Act of 1949.

. . . The Chair calls attention to the language of paragraph (b) of section 201 of title II of the Reorganization Act of 1949 which reads as follows: "with full recognition of the constitutional right of either House to change such rules so far as relating to procedure in such House at any time in the same manner and to the same extent as in the case of any other rule of such House." . . .

On April 5, the gentleman from Missouri [Mr. Cannon], chairman of the Committee on Appropriations, submitted a unanimous-consent request to the House, which was granted, which

has the force of a rule, and which relates to the rules of the House governing the consideration of the omnibus appropriation bill while it is before the House and, of course, incidentally affecting other legislation. The consent request submitted by the gentleman from Missouri was "that the general appropriation bill for the fiscal year 1951 have right-of-way over all other privileged business under the rules until disposition, with the exception of conference reports."

That request was granted by unanimous consent. On the next day the gentleman from Missouri [Mr. Cannon], in correcting and interpreting the consent request granted on April 5, submitted a further unanimous-consent request.

The daily Record shows, on page 4976, April 6, that the gentleman from Missouri [Mr. Cannon] said:

Mr. Speaker, on page 4835 of the daily Record of yesterday, the first column carrying the special order made by the House last night reads that the general appropriation bill shall be a special order privileged above all other business of the House under the rule until disposition. The order made was until final disposition. I ask unanimous consent that the Record and Journal be corrected to conform with the proceedings on the floor of the House yesterday.

The Record further shows that the Speaker put the request and there was no objection.

MR. RANKIN: Mr. Speaker, a parliamentary inquiry. . . .

We for the first time this year have all the appropriations in one bill. Now, if they drag out consideration under the 5-minute rule beyond the 24th, would that not shut the Congress off

entirely from voting on any of these recommendations? So we do have a constitutional right to consider these propositions without having them smothered in this way.

THE SPEAKER PRO TEMPORE: The Chair will state that the House always has a constitutional right and power to refuse to go into the Committee of the Whole on any motion made by any Member, so that the House is capable of carrying out its will, whatever may be the will of the majority of the House.

Continuing, the Chair will state that in the opinion of the present occupant, in view of the unanimous-consent request made by the gentleman from Missouri and granted by the House, if any member of the Appropriations Committee moves that the House resolve itself into the Committee of the Whole on the State of the Union to consider the appropriation bill, that motion has preference over any other preferential motion. It is a matter that the House decides when the motion is made as to what it wants to do and it has an opportunity when that motion is made to carry out its will.

MR. [ARTHUR L.] MILLER of Nebraska: Mr. Speaker, a parliamentary inquiry. . . .

I understood the statement of the gentleman from Missouri on April 6 was that the appropriation bill would take precedence over all legislation and special orders until entirely disposed of. Does that include conference reports?

THE SPEAKER PRO TEMPORE: A conference report is in a privileged status in any event.

MR. TABER: They were specifically exempted.

THE SPEAKER PRO TEMPORE: They were specifically exempted. In relation to the observation made by the gentleman from Michigan [Mr. Hoffman] that because other business has been brought up and that therefore constitutes a violation of the unanimous-consent request, the Chair, recognizing the logic of the argument, disagrees with it because that action was done through the sufferance of the Appropriations Committee and, in the opinion of the Chair, does not constitute a violation in any way; therefore does not obviate the meaning and effect of the unanimous-consent request heretofore entered into, and which the Chair has referred to.

For the reasons stated, the Chair overrules the point of order. . . .

MR. [HERMAN P.] EBERHARTER [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. EBERHARTER: I believe I am correct, Mr. Speaker, in stating that since the unanimous-consent request of the gentleman from Missouri [Mr. Cannon] was granted, that the House took up a measure under the new 21-day rule. I would like to know, Mr. Speaker, whether or not that was taken up because of its high privilege or whether it was taken up because of the sufferance of the chairman of the Committee on Appropriations, the gentleman from Missouri [Mr. Cannon].

THE SPEAKER PRO TEMPORE: The present occupant of the Chair, of course, is unable to look into the mind of the Speaker who was presiding at the time. But from the knowledge that the Chair has, which, of course, is

rather close, it was because the chairman of the Committee on Appropriations permitted it to be done through sufferance. In other words, if the chairman of the Committee on Appropriations had insisted on going into the Committee of the Whole House on the State of the Union, and if the present occupant of the chair had been presiding, there is nothing else that could have been done under the unanimous-consent request, in the Chair's opinion, but to recognize the motion.

MR. EBERHARTER: A further parliamentary inquiry, Mr. Speaker. . . .

As I understand the unanimous-consent request of the gentleman from Missouri, it was that the appropriation bill would take preference over any other matters having a high privilege. My understanding of the new 21-day rule is that that is a matter of the highest privilege, and therefore I am wondering whether the same rule applies.

THE SPEAKER PRO TEMPORE: The gentleman is correct, but that rule can be changed just like any other rule of the House can be changed. . . .

The unanimous-consent request . . . appears in the Record of April 6, that the general appropriation bill shall be a special order privileged above all other business of the House under the rule until disposition. The order made was "until final disposition."

House Determines Question of Consideration

§ 6.2 An automatic roll call was had on the motion to go into the Committee of the Whole to consider an appropriation

bill after a motion to adjourn was rejected.

On Feb. 14, 1946,⁽¹⁸⁾ a Member addressed Speaker pro tempore John J. Sparkman, of Alabama, as follows, and proceedings ensued as indicated below:

MR. [LOUIS T.] LUDLOW [of Indiana]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5452) making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1947, and for other purposes.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Indiana.

The question was taken; and on a division (demanded by Mr. Cochran) there were—ayes 103, no 1.

MR. [JOHN J.] COCHRAN [of Missouri]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will count. (After counting.) One hundred and seventy-four Members present; not a quorum.

MR. [COMPTON I.] WHITE [of Idaho]: Mr. Speaker, I move that the House do now adjourn.

The question was taken; and on a division (demanded by Mr. White) there were—ayes 31, noes 103.

So the motion was rejected.

18. 92 CONG. REC. 1324, 79th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Indiana [Mr. Ludlow].

The Doorkeeper will close the doors, the Sergeant-at-Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 243, nays 16, not voting 171.

§ 7. Nonprivileged Appropriations—“Continuing” Appropriations

The right of the Committee on Appropriations to report at any time is confined strictly to general appropriation bills.⁽¹⁹⁾ This section discusses the consideration of appropriations not falling within the category of general appropriation bills. For example, joint resolutions continuing appropriations pending enactment of general appropriation bills for the ensuing fiscal year are not “general” appropriation bills and therefore are not reported or called up as privileged.⁽²⁰⁾ Similarly, supplemental

appropriations for a single agency or department of government do not comprise a “general” appropriation bill, though bills making supplemental appropriations for diverse agencies are considered general appropriation bills.⁽¹⁾

Use of Continuing Appropriations

§ 7.1 Where appropriations for certain operations of the Federal Government have remained unprovided for at the beginning of a fiscal year, through the failure of enactment of the supply bills customarily providing for such operations, a bill to extend appropriations for a limited time period for the same operations as those previously provided for, and under the same conditions, restrictions, and limitations has been considered by unanimous consent.

On June 30, 1937,⁽²⁾ the following actions took place in the

19. See the discussion at the beginning of §6, *supra*; and the precedents in this section.

20. See *Procedure in the U.S. House of Representatives* Ch. 25 §2.2 (4th ed.). See also 8 Cannon's Precedents §2282, *et seq.* In 1981, rule XI clause 4, was amended to allow con-

tinuing appropriation bills to be reported as privileged after September 15 (H. Res. 5, 97th Cong.). Precedents arising under this new rule will appear in later volumes.

1. See §7.4, *infra*.

2. 81 CONG. REC. 6611, 6612, 75th Cong. 1st Sess.